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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-199752

DATE: August 22, 1980

MATTER OF: DBA Systems, Inc.

**DIGEST:**

Protest that amended solicitation included data allegedly proprietary to protester, filed after final closing date for receipt of proposals, is dismissed as untimely.

DBA Systems, Inc. (DBA), *Against Contract* [protests the award] of a contract to another firm due to alleged distribution of DBA's proprietary technical data by the United States Army Missile Command in amendments 0004 and 0006 to request for proposals (RFP) DAAH01-79-R-0818. DBA asks our Office to direct cancellation of the award and prevent the Army from disseminating its technical data in violation of Defense Acquisition Regulations (DAR) §§ 3-507.1 and 3-805.3(b) (1976 ed.).

We conclude that the protest is untimely. Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), provide:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation."

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The Army states that in accordance with the above provisions, any protest based on alleged improprieties incorporated by amendments 0004 and 0006 were required to be filed no later than February 4, 1980, and April 21, 1980, respectively, the date for acknowledgment, in order to be considered timely. Since DBA's written protest to the Army was made by letter dated June 13, 1980, the Army denied the protest by letter of July 8, 1980, stating that the protest was untimely. The Army also stated that the protest was without merit because the amendments in question did no more than relax the specifications in accordance with exceptions taken to them by DBA.

Our Office received DBA's July 24 protest letter on July 28, 1980, and find it untimely filed. DBA contends that the basis for its protest is the alleged disclosure by the Army of its proprietary data in amendments 0004 and 0006 which were to be acknowledged by February 4 and April 21, 1980. Therefore, the basis for DBA's protest was apparent from the amended solicitation. A protest against any alleged improprieties in the RFP, in order to be timely, was required to be filed prior to May 21, 1980, the date set for receipt of best and final offers. 4 C.F.R. § 20.2(b)(1) (1980), supra; see Hydraulic Technology Inc., B-196450, January 7, 1980, 80-1 CPD 19.

Accordingly, DBA's protest, filed with our Office more than 2 months after the final closing date for the receipt of offers is clearly untimely and not for consideration on the merits.

The protest is dismissed.

*Warren R. Van Cleave*  
*for* Milton J. Socolar  
General Counsel